

Assembly Bill No. 22

Passed the Assembly July 23, 2009

Chief Clerk of the Assembly

Passed the Senate July 23, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 3884.1 and 3884.2 to the Food and Agricultural Code, and to amend Sections 11011.13 and 11011.15 of, and to add Sections 11011.2 and 14670.13 to, the Government Code, relating to state property, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 22, Evans. State property: Orange County Fair: inventory: leases: sale and leaseback.

(1) Existing law provides that the state is divided into agricultural districts within the boundaries of which district agricultural associations may be formed. Existing law provides that District 32 is the County of Orange.

This bill would create District 32a, which would consist of all of that real property that is a portion of District 32 that is commonly known as the Orange County Fair located in the City of Costa Mesa, and would prescribe certain matters applicable to officers of District 32 and District 32a. The bill would, among other things, (A) authorize the Department of General Services to sell all or any portion of the real property that composes District 32a pursuant to a public bidding process, as provided; (B) prohibit District 32a from entering into any contract, lease, or other agreement affecting the use or operation of that real property for a period that exceeds 3 months; (C) require those contracts, leases, or agreements to contain a certain cancellation notice; (D) authorize the department to be reimbursed for reasonable costs or expenses; (E) authorize bonds involving District 32a property to be paid from the proceeds of any sale or lease of District 32a property; (F) require the Director of General Services to report specified information to the chairs of the fiscal committees of the Legislature 30 days prior to executing a transaction for the sale of the real property; (G) require the director to include a reservation to the state of mineral rights in the sale of the real property; (H) require the net sale proceeds to be deposited into the District 32a Disposition Fund, which the bill would create in the State Treasury; and (I) require the

department to report annually to the Legislature on the status of the sale of the real property.

This bill would require District 32a to be abolished and all funds in the District 32a Disposition Fund to be transferred to the General Fund upon sale of all property that composes District 32a.

(2) Existing law requires the Department of General Services to offer for sale land that is declared excess or is declared surplus by the Legislature, and that is not needed by any state agency, to local agencies and private entities and individuals, subject to specified conditions. Existing law also authorizes the Director of General Services, with the consent of the state agency involved, to let for a period not to exceed 5 years, any real or personal property that belongs to the state, subject to specified conditions. Any money received in connection with these leases is required to be deposited in the Property Acquisition Law Money Account and be available to the Department of General Services upon appropriation by the Legislature.

This bill would authorize the Department of General Services to lease specified real property without certain existing restrictions, if the Director of General Services determines that the real property is of no immediate need to the state but may have a potential future use. This bill would require the Department of General Services to annually report to the Legislature on certain leases entered into under the authority of these provisions. The bill would also specify procedures for the reimbursement of costs incurred pursuant to entering into a lease under these provisions and require the Department of Finance to deposit, into the General Fund, the net proceeds of a lease after the reimbursement of those costs.

This bill would authorize the Department of General Services to enter into a sale or long-term lease of certain listed properties, including entering into an option to repurchase that property or building. The bill would authorize the Department of General Services to sell real property or buildings if the proceeds of the sale would be used to defense or otherwise retire lease revenue bonds only if the issuer and trustee for the bonds approves the sales transaction. The bill would require the Director of General Services to make an annual report, on or before June 30 of each year, to the fiscal committees of the Legislature regarding the prior year's sales and leases pursuant to these provisions and at least 30 days prior to entering into any sale or lease pursuant to these

provisions. If the proceeds of the sale would be used to defease or retire the bonds, those proceeds would be appropriated to the Department of General Services for that purpose.

The bill would specify procedures for the reimbursement of costs incurred pursuant to these provisions. The Department of Finance would be required to deposit, in the General Fund, the net proceeds of a sale or lease after the reimbursement of certain costs.

(3) Existing law requires each agency, as defined, to furnish the Department of General Services with a record of each parcel of real property it possesses and to update its real property holdings, reflecting any changes, by July 1 of each year, including specified information regarding project uses during the next 3 years.

This bill would define terms for purposes of this requirement and would require the update of the real property holdings to include additional information regarding specific programmatic uses, whether the property is fully utilized, partially utilized, or excess with regard to an existing or ongoing program of the agency, agreements relating to the use of the property, and projected future uses during the next 5 years, as identified pursuant to the 5-year infrastructure plan, the agency's master plan, or as specified. The bill would require the head of each agency to make a specified annual certification and would require the Department of General Services to maintain the certification notices on its Internet Web site.

(4) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA generally requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA also provides some exemptions from its requirements for specified projects.

This bill would exempt the sale, lease, or repurchase of the Orange County Fair or specified state real property or buildings subject to the bill that is made on an "as is" basis from designated provisions of CEQA. The bill would also exempt from those

provisions of CEQA the execution of the purchase and sale agreement or the exchange agreement for this property or these buildings if the disposition is not made on an “as is” basis and the close of escrow is contingent on a specified requirement and compliance with CEQA.

(5) This bill would state the Legislature’s finding and declaration that specified provisions apply to every transaction undertaken pursuant to the authority of this act.

(6) The bill would authorize the Director of Finance to provide a loan from the General Fund in the amount of not more than \$10,000,000 to augment Item 1760-001-0002 of Section 2 of the Budget Act of 2009 and to adjust the amounts appropriated in Item 1760-001-0002 of Section 2 of the Budget Act of 2009, for the purposes of supporting the management of the state’s real property assets to implement the bill, thereby making an appropriation.

(7) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 3884.1 is added to the Food and Agricultural Code, to read:

3884.1. There is hereby created District 32a, which consists of all of that real property that is a portion of District 32 that is commonly known as the Orange County Fair located in the City of Costa Mesa. Notwithstanding any other law, any officer of District 32a may also be an officer of District 32 and shall be a resident of District 32. All otherwise applicable ethical duties, including those in Section 1090 of the Government Code, subdivision (a) of Section 8920 of the Government Code, and the Political Reform Act of 1974 (Title 9 (commencing with Section

81000) of the Government Code), shall apply to the officers of both District 32 and District 32a, and shall apply in regard to the transactions contemplated by Section 3884.2.

SEC. 2. Section 3884.2 is added to the Food and Agricultural Code, to read:

3884.2. (a) The District 32a Disposition Fund is hereby created in the State Treasury.

(b) The Department of General Services may sell all or any portion of the real property that composes District 32a. District 32a shall not enter into any contract, lease, or other agreement affecting the use or operation of the real property for a period that exceeds three months, and all of these contracts, leases, or other agreements shall contain a provision that they may be canceled upon a 30-day notice from the Department of General Services. The Department of General Services shall be reimbursed for any reasonable cost or expense incurred for the transactions described in this section. Additionally, to the extent bonds issued by the State Public Works Board or other entity involve the property to be sold pursuant to this section, all issuer and trustee related costs associated with the review of any proposed sale, together with the costs related to the defeasance or retirement of any bonds, which may include the cost of nationally recognized bond counsel, shall be paid from the proceeds of any sale or lease authorized by this section. The net proceeds from the sale shall be deposited into the District 32a Disposition Fund.

(c) The sale of the real property authorized by this section shall be pursuant to a public bidding process designed to obtain the highest, most certain return for the state from a responsible bidder, and any transaction based on such a bidding process shall be deemed to be the fair market value for the property. A notice of this bidding process shall be posted by the Department of General Services on its Internet Web site for at least 30 days prior to the sale of the real property. The provisions of Section 11011.1 of the Government Code are not applicable to the sale of real property authorized under this section.

(d) Thirty days prior to executing a transaction for a sale of real property authorized by this section, the Director of General Services shall report to the chairs of the fiscal committees of the Legislature all of the following:

(1) The financial terms of the transaction.

(2) A comparison of fair market value for the real property and the terms listed in paragraph (1).

(3) Any basis for agreeing to terms and conditions other than fair market value.

(e) As to the real property sold pursuant to this section, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. If, however, the Director of General Services determines that there is little or no potential for mineral deposits, the reservation may be without surface right of entry above a depth of 500 feet, or the rights to prospect for, mine, and remove the deposits shall be limited to those areas of the real property conveyed that the director determines to be reasonably necessary for the removal of the deposits.

(f) The Department of General Services shall report to the Legislature on or before June 30 of each year on the status of the sale of real property authorized by this section.

(g) Upon the sale of all property that composes District 32a, District 32a shall be abolished and all funds in the District 32a Disposition Fund shall be transferred to the General Fund.

(h) (1) The disposition of state real property or buildings specified in subdivision (b) that are made on an “as is” basis shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code. Upon title to the parcel vesting in the purchaser or transferee of the property, the purchaser or transferee shall be subject to any local governmental land use entitlement approval requirements and to Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(2) If the disposition of state real property or buildings specified in subdivision (b), is not made on an “as is” basis and close of escrow is contingent on the satisfaction of a local governmental land use entitlement approval requirement or compliance by the local government with Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code, the execution of the purchase and sale agreement or of the exchange agreement by all parties to the agreement shall be exempt from Chapter 3

(commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(3) For the purposes of this subdivision, “disposition” means the sale, lease, or repurchase of state property or buildings specified in subdivision (b).

(i) The disposition of real property or buildings, or both, pursuant to this section does not constitute a sale or other disposition of state surplus property within the meaning of Section 9 of Article III of the California Constitution and shall not be subject to subdivision (g) of Section 11011 of the Government Code.

SEC. 3. Section 11011.2 is added to the Government Code, to read:

11011.2. (a) (1) Notwithstanding any other law, including, but not limited to, Sections 11011 and 14670, except as provided in this section, the Department of General Services may lease real property under the jurisdiction of a state agency, department, or district agricultural association, if the Director of General Services determines that the real property is of no immediate need to the state but may have some potential future use to the program needs of the agency, department, or district agricultural association.

(2) The Director of General Services may not lease any of the following real property pursuant to this section:

(A) Tax-deeded land or lands under the jurisdiction of the State Lands Commission.

(B) Land that has escheated to the state or that has been distributed to the state by court decree in estates of deceased persons.

(C) Lands under the jurisdiction of the State Coastal Conservancy or another state conservancy.

(D) Lands under the jurisdiction of the Department of Transportation or the California State University System, or land owned by the Regents of the University of California.

(E) Lands under the jurisdiction of the Department of Parks and Recreation.

(F) Lands under the jurisdiction of the Department of Fish and Game.

(3) A lease entered into pursuant to this section shall be set at the amount of the lease’s fair market value, as determined by the

Director of General Services. The Director of General Services may determine the length of term or a use of the lease, and specify any other terms and conditions which are determined to be in the best interest of the state.

(b) The Department of General Services may enter into a long-term lease of real property pursuant to this section that has outstanding lease revenue bonds and for which the real property cannot be disencumbered from the bonds, only if the issuer and trustee for the bonds approves the lease transaction, and this approval takes into consideration, among other things, that the proposed lease transaction does not breach a covenant or obligation of the issuer or trustee.

(c) (1) All issuer- and trustee-related costs for reviewing a proposed lease transaction pursuant to this section, and all other costs of the lease transaction related to the defeasance or other retirement of any bonds, including the cost of nationally recognized bond counsel, shall be paid from the proceeds of that lease.

(2) The Department of General Services shall be reimbursed for any reasonable costs or expenses incurred in conducting a transaction pursuant to this section.

(3) Notwithstanding subdivision (g) of Section 11011, the Department of General Services shall deposit, into the General Fund, the net proceeds of a lease entered into pursuant to this section, after deducting the amount of the reimbursement of costs incurred pursuant to this section or the reimbursement of adjustments to the General Fund loan made pursuant to Section 8 of the act adding this Section from the lease.

(d) The Department of General Services shall transmit a report to each house of the Legislature on or before June 30, 2011, and on or before June 30 each year thereafter, listing every new lease that exceeds a period of five years entered into under the authority of this section and the following information regarding each listed lease:

- (1) Lease payments.
- (2) Length of the lease.
- (3) Identification of the leasing parties.
- (4) Identification of the leased property.
- (5) Any other information the Director of General Services determines should be included in the report to adequately describe the material provisions of the lease.

SEC. 4. Section 11011.13 of the Government Code is amended to read:

11011.13. For purposes of Section 11011.15, the following definitions shall apply:

(a) “Agency” means any state agency, department, division, bureau, board, commission, district agricultural association, and the California State University. “Agency” does not mean the Legislature, the University of California, or the Department of Transportation.

(b) “Fully utilized” means that 100 percent of the property is being appropriately utilized by a program of an agency every business day of the year.

(c) “Partially utilized” means one or more of the following:

(1) Less than 100 percent of the property is appropriately utilized by a program of an agency.

(2) The property is not used every business day of the year by an agency.

(3) The property is used by other nonstate governmental entities or private parties.

(d) “Excess land” means property that is no longer needed for either an existing or ongoing state program or a function of an agency.

SEC. 5. Section 11011.15 of the Government Code is amended to read:

11011.15. (a) The Department of General Services shall maintain a complete and accurate statewide inventory of all real property held by the state and categorize that inventory by agency and geographical location. The inventory shall include all information furnished by agencies pursuant to subdivision (b) and the University of California pursuant to Section 11011.17. The inventory shall be updated annually.

(b) Each agency shall furnish the department, in the format specified by the department, a record of each parcel of real property that it possesses. Each agency shall update its real property holdings through December 31 of the previous year, reflecting any changes, by July 1 of each year. This record shall include, but is not limited to, all of the following information:

(1) The location of the property within the state and the county, the size of the property, including its acreage, and any other

relevant property data which the department deems necessary. This latter requirement shall be uniformly applied to all agencies.

(2) The date of the acquisition of the real property, if available.

(3) The manner in which the property was acquired and the purchase price, if available.

(4) A detailed description of the current uses of the property, including specific programmatic uses, and whether the property is fully utilized, partially utilized, or excess, with regard to either an existing or ongoing program of the agency. The agency shall also provide a detailed description of every lease, license, or other agreement relating to the use of the property.

(5) Any projected future uses of the property during the next five years, as identified pursuant to the five-year infrastructure plan or the agency's master plan. If the property is not included in the five-year infrastructure plan or the agency's master plan, or is identified as partially utilized or excess pursuant to paragraph (4), the agency shall provide detailed information regarding the need to continue ownership or management of the property. In the case of land held for state park use, for which the projected use would exceed a five-year period, the projected use and estimated date of construction or use shall be furnished.

(6) A concise description of each major structure located on the property.

(7) The estimated value of real property declared surplus by the agency and real property where the agency has not identified a current or potential use.

(c) The department shall prepare a separate report and shall update the report annually of all properties declared surplus or properties with no identified current or projected use. The report shall be made available upon request.

(d) The head of each agency shall also certify, on or before July 1 annually, that the agency has accurately and completely reported all property information required by this section and that it has identified any excess property pursuant to Section 11011. The Department of General Services shall maintain the certification notices in a conspicuous place on its Internet Web site.

SEC. 6. Section 14670.13 is added to the Government Code, to read:

14670.13. (a) Notwithstanding any other law, but subject to the conditions specified in subdivision (c), the Department of

General Services may enter into a sale or long-term lease of the properties specified in subdivision (b). A sale or long-term lease entered into pursuant to this section may include an option for the state to repurchase that property or building, or both. The Director of General Services may determine the other terms and conditions that shall be imposed upon that sale or lease, for the best interest of the state. Any sale of property pursuant to this section shall be for no less than fair market value.

(b) The Department of General Services may enter into a sale or long-term lease pursuant to this section for any, or all, of the following real properties or buildings, or both:

(1) The Attorney General Building located at 1300 I Street in the City of Sacramento.

(2) The California Emergency Management Agency Building located at 3650 Schreiver Avenue in the City of Rancho Cordova.

(3) The Capitol Area East End Complex, located in the City of Sacramento, at all of the following locations:

(A) Block 225 located at 1430 N Street in the City of Sacramento.

(B) Block 171 located at 1501 Capitol Avenue in the City of Sacramento.

(C) Block 172 located at 1500 Capitol Avenue in the City of Sacramento.

(D) Block 173 located at 1615 Capitol Avenue in the City of Sacramento.

(E) Block 174 located at 1616 Capitol Avenue in the City of Sacramento.

(F) The parking facility located at 1214 17th Street in the City of Sacramento.

(4) The Elihu M. Harris Building located at 1515 Clay Street in the City of Oakland.

(5) The Franchise Tax Board Complex located at 9645 Butterfield Way in the City of Sacramento.

(6) The San Francisco Civic Center, also known as the Earl Warren / Hiram Johnson Building, at both of the following locations:

(A) 350 McAllister Street in the City and County of San Francisco.

(B) 455 Golden Gate Avenue in the City and County of San Francisco.

(7) The New Junipero Serra State Building located at 320 West 4th Street in the City of Los Angeles.

(8) The Department of Justice Building located at 4949 Broadway in the City of Sacramento.

(9) The Public Utilities Commission Building, also known as the Governor Edmund G. “Pat” Brown Building, located at 505 Van Ness Avenue in the City and County of San Francisco.

(10) The Judge Joseph A. Rattigan Building located at 50 D Street in the City of Santa Rosa.

(11) The Ronald Reagan State Building located at 300 South Spring Street in the City of Los Angeles.

(c) (1) The Legislature hereby finds and declares it may be infeasible to sell or lease the real property or buildings listed in subdivision (b), if the real property or buildings have outstanding lease revenue bonds due to bond covenants, market disclosure issues, and federal tax regulations and the bonds cannot be defeased or otherwise retired.

(2) If the proceeds of a sale subject to this section will be used to defease or otherwise retire lease revenue bonds on real property or a building listed in subdivision (b), the proceeds in an amount necessary to defease or retire the bonds are hereby appropriated to the Department of General Services, and the Department of General Services may sell that building or real property pursuant to this section, including a fee simple sale or the sale of a lesser property interest, such as a long-term lease of the real property, only if the issuer and trustee for the bonds approves the sale transaction and this approval takes into consideration, among other things, that the proposed sale transaction will not breach any covenant or obligation of the issuer or trustee.

(d) The disposition of the real properties or buildings, or both, pursuant to this section does not constitute a sale or other disposition of surplus state property within the meaning of Section 9 of Article III of the California Constitution and shall not be subject to subdivision (g) of Section 11011.

(e) Thirty days prior to executing a transaction for a sale or lease of any of the real property or buildings listed in subdivision (b), the Director of General Services shall report to the chairs of the fiscal committees of the Legislature the terms and conditions of the transaction, including, but not limited to, the financial terms.

(f) Commencing in 2010, on or before June 30 of each year following the enactment of this section, the Director of General Services shall report the status of any completed or pending sales pursuant to this section to the fiscal committees of the Legislature.

(g) (1) The Department of General Services shall be reimbursed for any reasonable costs or expenses incurred pursuant to this section.

(2) All issuer- and trustee-related costs of reviewing any proposed sale transaction, and all costs related to the defeasance or other retirement of any bonds, including the cost of nationally recognized bond counsel, shall be paid from the proceeds of a sale or lease conducted pursuant to this section.

(3) The Department of General Services shall deposit in the General Fund the net proceeds from the sale or long-term lease of the real properties or buildings leases, or both, made pursuant to this section, after deducting the amount of reimbursement for costs incurred pursuant to this section or the reimbursement of adjustments to the General Fund loan.

(h) (1) The disposition of state real property or buildings specified in subdivision (b) that are made on an “as is” basis shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code. Upon title to the parcel vesting in the purchaser or transferee of the property, the purchaser or transferee shall be subject to any local governmental land use entitlement approval requirements and to Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(2) If the disposition of state real property or buildings specified in subdivision (b) is not made on an “as is” basis and close of escrow is contingent on the satisfaction of a local governmental land use entitlement approval requirement or compliance by the local government with Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code, the execution of the purchase and sale agreement or of the exchange agreement by all parties to the agreement shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(3) For the purposes of this subdivision, “disposition” means the sale, lease or repurchase of state property or buildings specified in subdivision (b).

SEC. 7. The Legislature finds and declares that Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code applies to every transaction undertaken pursuant to the authority of this act.

SEC. 8. The Director of Finance may provide a loan from the General Fund in the amount of not more than ten million dollars (\$10,000,000) to augment Item 1760-001-0002 of Section 2 of the Budget Act of 2009 and may adjust the amounts appropriated in Item 1760-001-0002 of Section 2 of the Budget Act of 2009, for the purposes of supporting the management of the state’s real property assets to accommodate any increase in workload or other costs to the Department of General Services in implementing this act.

SEC. 9. This act addresses the fiscal emergency declared by the Governor by proclamation on July 1, 2009, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the speedy resolution of the state’s fiscal crisis, it is necessary that this act take effect immediately.

Approved _____, 2009

Governor